IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 562 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALEMBIC CHEMICAL WORKS LTD. (ALEMBIC LTD.)

Versus

DY. C.I.T.

Appearance:

1. TAX APPEAL No. 562 of 1999

MR KH KAJI for Petitioner No. 1

MR MANISH K KAJI for Petitioner No. 1

MR KM PARIKH for Respondent No. 1

MR D.D.VYAS for M/S.VYAS ASSOCIATES for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2003

CAV JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The appeal u/s.260A of the Income Tax Act 1961 (the Act) was admitted on the following four questions of law :

"a Whether the Tribunal was right in law in holding that the liability of the appellant to ONGC in respect of gas consumption subsequent to 29.1.87 was contingent liability and was not allowable though the Gujarat High Court had dismissed the writ petition of the appellant challenging the said levy by its judgment delivered in F.Y.1993-94 and the Hon'ble Supreme Court had not granted any stay and had earlier by its decision dated 4.5.90 for the period prior to 29.1.87 upheld the right of ONGC to demand the price as per their decision which was not open to challenge by the appellant?

b. Whether the Tribunal was right in law in holding that the interest amount claimed by the ONGC in respect of arrears of its claim for gas liability referred to in question no.(a) was also not allowable as the same was contingent liability ?

c. Whether the Tribunal was right in law in holding that the profits of Pan Pharma Dn. for the purposes of computing the deduction u/s. 80HH and 80I should not be computed on the basis of accounts submitted by the Pan Pharma Dn. but after apportioning indirect expenses incurred by the appellant being commission to selling agents amounting to Rs.2.25 crores, publicity and medical literature expenses amounting to Rs.51 lacs, interest and discount charges of Rs.1.28 crores and other expenses of Rs.61.45 lacs as the said expenses were incurred only by the appellant for marketing the said products taken by it from the Pan Pharma Dn. at a much lower price as the said division was not required to incur the said expenditure as it was selling the same to another division of the appellant itself and, therefore, whether the Tribunal applied the correct principle for

computing the profits of Pan Pharma Dn. by providing for allocation of the aforesaid expenses reducing the profits of the division for the purposes of the ss.80HH and 80I?

d. Whether the Tribunal was right in law in holding that for the purpose of computation of deduction u/s.80HHC 90% of the income relatable to rent, computer charges, service charges, misc. income and insurance claim was required to be deducted from the profits under Explanation (baa) to section 80HHC (4A), ignoring use of the word 'or' between reference to clauses (iiia), (iiib) and (iiic) of Section 28 in clause (1) of the said Explanation and other items above referred to, and further erred in reading the word 'or as 'and'?"

2 The appellant is a limited company manufacturing basic drugs in the form of tablets, capsules etc. as well as various injectibles, grannules for suspension, eye ointments and paediatric drops etc. For the purposes of its manufacturing activity the appellant has five divisions viz : (1) Pharmaceutical Division, Baroda, (2) Neomer Division, Panelav, Dist. Panch Mahals, (3) Panpharma Division, Panelav, Dist.Panch Mahals, (4) Veterinary Division, Baroda, (5) E.P.Division, Vadodara.

3 The assessment year is 1994-95 and the relevant accounting period is previous year ending on 31.3.1994. The appellant returned total income of Rs.1,29,07,860/-. On 31.12.1996 the assessment order came to be framed under section 143(3) of the Act computing the total income of the appellant company at Rs.5,85,16,388/-. Interalia, the assessing officer disallowed the claim of the appellant in relation to liability to pay user charges to Oil and Natural Gas Corporation (ONGC) in respect of the gas consumed after 29.1.1987; the claim of interest on the aforesaid amount was also held to be not allowable. The assessing officer recomputed profits of Panpharma Division for the purpose of arriving at the figure which should be permitted as deduction under Sections 80HH and 80I of the Act. Similarly, for the purpose of computation of deduction under Section 80HHC the assessing officer held that income relatable to rent, computer charges, service charges, miscellaneous income and insurance claim were required to be reduced before arriving at the figure at which deduction under Section 80HHC could be allowed.

4 The appellant carried the matter in appeal before the CIT (Appeals) who for the reasons given in his order

dated 28.2.1997 confirmed the action of the assessing officer. Being aggrieved, the assessee carried the matter in appeal before the Tribunal. The Tribunal for the reasons stated in its order dated 9.8.1999 confirmed the action of the Assessing Officer on all the four counts and,hence,the present appeal.

I. LIABILITY TOWARDS O.N.G.C.

5 Mr.K.H.Kaji, learned Advocate appearing on behalf of the appellant submitted that the appellant had claimed deduction for payment of supply of gas by ONGC for the period subsequent to 29.1.1987. That for the period prior to 29.1.1987, it was held by the Supreme Court of India on 4.5.1990 that ONGC was entitled to demand the price as per their decision and the same was not open to challenge. That while holding so, the Apex Court had reversed the decision of this Court in that behalf, wherein this Court had taken the view that the demand for the price by ONGC was erroneous in law. That on 30.1.1987 Government of India had issued circular fixing the price for the gas supplied by ONGC. That the said circular had been challenged before this Court. In 1993 the petition filed by the appellant and others came to be dismissed by this Court and an appeal is pending before the Supreme Court against the said decision. According to the appellant, therefore, in light of the earlier decision of the Apex Court dated 4.5.1990 and the rejection by this Court of the petition preferred by the appellant the claim of the appellant was allowable in full as there was no likelihood that the Supreme Court would allow the appeal, in view of its earlier judgment. It was further contended that the liability was in relation to demand by ONGC for the entire period after 29/1/1987 which had been incurred but had not been paid fully in light of the pending litigation. That all the three authorities viz. Assessing Officer, CIT (Appeals) and the Tribunal had fallen into error in holding that the liability was contingent and could not be allowed. Mr.Kaji relied upon the decision of the Supreme Court in case of Kedarnath Jute. Mfg.Co.Ltd. Vs. Commissioner of Income Tax (Central) Calcutta (1971) 82 ITR 363.

6 The Tribunal has followed its own order for assessment years 1983-84 and 1984-85 holding that as the liability was a contingent liability it could not be allowed for the year under consideration. Mr.Kaji's reliance on the decision of the Supreme Court in case of Kedarnath Jute Mfg.Co.Ltd. Vs. Commissioner of Income Tax (Central) Calcutta, (supra) is misplaced. There is no dispute as to the fact that the liability to pay ONGC

is a liability for the user charges, viz. for the gas consumed by the appellant and supplied by ONGC. That, such supply is on the basis of contract. According to Mr.Kaji the term of the written contract had expired and, hence, there was no subsisting contract. Even if there was no written contract in existence there is no denial to the fact that ONGC was supplying the gas and the appellant company was consuming the same, may be on the basis of oral contract or understanding. However, the liability in question cannot be termed as a statutory liability but was a contractual liability. The case of Kedarnath Jute Mfg.Co.(supra) was a case pertaining to liability incurred on sales and it was in that context that the Apex Court held that the liability to sales tax arose the moment the dealer made either purchase or sale.

7 The appellant follows Mercantile System of Accounting. In the case of Commissioner of Income Tax Vs. A.Gajapathy Naidu, (1964) 53 ITR 114, the Supreme Court of India has enunciated the law in relation to accrual of income in the following terms :

> "When an Income-tax Officer proceeds to include a particular income in the assessment, he should ask himself, inter alia, two questions, namely: (i) what is the system of accountancy adopted by the assessee, and (ii) if it is the mercantile system, subject to the deeming provisions, when has the right to receive accrued? If he comes to the conclusion that such a right accrued or arose to the assessee in a particular accounting year, he should include the said income in the assessment of the succeeding assessment year. No power is conferred on the Income-tax Officer under the Act to relate back an income that accrued or arose in a subsequent year to another earlier year, on the ground that that income arose out of an earlier transaction. Nor is the question of reopening of accounts relevant in the matter of ascertaining when a particular income accrued or arose."

8. This decision has been followed and applied by the Apex Court when it was called upon to decide question of incurring of liability and deduction thereof. In the case of Commissioner of Income Tax Vs. Swadeshi Cotton and Flour Mills Private Limited (1964) 53 ITR 134, the Apex Court held as under :

"An employer who follows the mercantile system of accounting incurs a liability towards profit bonus only when the claim, if made, is settled amicably or by industrial adjudication.

The system of re-opening of accounts does not fit in with the scheme of the Income-tax Act. As far as receipts are concerned there can be no re-opening of accounts, and the position is the same in respect of expenses."

9 Thus, the settled position in law is that in case of an assessee following mercantile system of accounting a liability is said to be properly incurred when the dispute between the parties is amicably settled or finally adjudicated, where the liability in question is not a statutory liability. In the case of the appellant it is apparent that the liability is pending adjudication by way of appeal in the Supreme Court and till the point of time the same is finally adjudicated, the liability in question would remain a contingent liability. It is pertinent to note that despite the earlier view declared by the Supreme Court between the same parties, the present appeal has been admitted and is pending. Hence, it is not possible to accept the contention on behalf of the appellant that the conclusion in the pending appeal is a foregone conclusion. In the result, there being no infirmity in the impugned order of the Tribunal in relation to this ground of appeal it is not necessary to interfere.

II. LIABILITY TO PAY INTEREST TO O.N.G.C.

10 In relation to the liability to pay interest demanded by ONGC it is pertinent to note that the same is claimed on the arrears of the principal liability not yet discharged by the appellant. In relation to this ground also the Assessing Officer, CIT (Appeals) and Tribunal have disallowed the claim of the appellant considering the same to be a contingent liability.

11 In light of what is already stated hereinbefore in relation to the principal liability regarding the gas consumed by the appellant and supplied by ONGC, there is no good reason to take a different view of the matter in

relation to interest payable on the arrears of unpaid liability towards consumption of gas. In the result, as far as this ground of appeal is concerned no interference is called for in absence of any infirmity in the order of the Tribunal.

III. COMPUTATION OF DEDUCTION U/S.80HH & 80I.

12 The appellant company claimed deduction of the statutory percentage from profit and gains derived from industrial undertaking viz.Panpharma Division located in Panch Mahals district. There is no dispute that this division is entitled to deduction under Sections 80HH & 80I of the Act as it fulfills all other conditions stipulatd in both the sections.

13 According to the Assessing Officer, in order to claim deduction at a higher figure, the assessee arrived at the profits and gains of the industrial undertaking without deducting therefrom indirect expenses like commission to selling agent, publicity and medical literature expenses, interest and discount charges and other miscellaneous expenses. The case of the assessing officer is that as the appellant had debited the entire aforesaid expenses in its books without allocating the same to Panpharma Division, the profits of the said division had been increased resulting in the appellant being in a position to claim higher deduction under sections 80HH and 80I of the Act. Therefore, the Assessing Officer reduced the profit of the Panpharma division after allocating such indirect expenses. This view has been confirmed both by CIT(Appeals) and Tribunal.

14 Mr.K.H.Kaji, learned Advocate appearing on behalf of the appellant contended that Panpharma division was a separate independent unit and provisions of Sections 80HH & 80I envisaged computing of profits of such independent unit and granting deduction thereon. That the said independent unit sells its entire production to the assessee company who in turn sells the same in the market through wholesalers and retailers and for this purpose incurs various expenditure for effecting such sales. It was submitted that Panpharma division does not incur any selling expenses and the said expenses are incurred by the main division of the appellant company. That the products supplied by Panpharma division are internally consumed by the main division or the parent unit and the price which is charged by Panpharma division to the main division is substantially lower than price at which the

appellant company sells the products in the market. It was therefore submitted by Mr.Kaji that the question which is required to be considered is :

Whether, Panpharma division is required to incur such expenses ?

That this question was required to be appreciated and answered in the context of the fact that there is only a single seller and a single buyer and the consideration for the goods has been fixed accordingly, and in these circumstances, it was not open to the Assessing Officer to substitute the consideration. That what would be the market value of such goods in such peculiar circumstances had to be ascertained and for this purpose the approach adopted by the Assessing Officer and confirmed by the appellate authorities was not warranted. That there was no provision in the Act permitting such exercise of allocation of expenses which were not in fact incurred by Panpharma division, for the simple reason that, it was not necessary for the said division to incur such expenses for the purpose of selling its goods. Reliance was placed on the following decisions :

(1) (1995) 79 Taxman 51 (Calcutta) - Commissioner of Income Tax Vs. Jiyajee Rao Cotton Mills.

(2) (1965) 56 ITR 77 (SC) - Commissioner of Income Tax Vs. Indian Bank Limited.

(3) (1971) 82 ITR 452 (SC) - Commissioner of Income Tax Vs. Maharashtra Sugar Mills Ltd.

(4) (1956)29 ITR 661 (SC) - Commissioner of Income Tax, Bombay Vs. C.Parakh & Co. (India) Ltd.

(5) 254 ITR 187 (Bombay) - Commissioner of Income Tax Vs. Win Laboratories Pvt.Ltd.

15 Mr.D.D.Vyas, lerned Standing Counsel appearing on behalf of the revenue submitted that the accounts were found to be incorrect and not properly drawn and, hence, the exercise undertaken by the Assessing Officer was justified. It was further submitted that for this purpose the power of the Assessing Officer could be found

in Section 80HH(6) and 80HH(7) of the Act. It was finally contended that the Tribunal had recorded a finding of fact and no substantial question of law could be said to arise out of the Tribunal's order and the appeal was required to be dismissed on this count alone.

16 Section 80HH of the Act as is necessary for the present purpose is reproduced hereinbelow :

"Deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas.

80HH.(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof".

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) Where any goods held for the purposes of the business of the industrial undertaking or the hotel are transferred to any other business carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the business of the industrial undertaking or the hotel and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the business of the industrial undertaking or the hotel does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of the industrial undertaking or the business of the hotel shall be computed as if the transfer, in

either case, had been made at the market value of such goods as on that date :

Provided that where, in the opinion of the Assesing Officer, the computation of the profits and gains of the industrail undertaking or the business of the hotel in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation. - In this sub-section 'market value' in relation to any goods means the price that such goods would ordinarily fetch on sale in the open market.

(7) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the business of the industrial undertaking or the hotel to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in the business of the industrial undertaking or the hotel, the Assessing Officer shall, in computing the profits and gains of the industrial undertaking or the hotel for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom".

On plain reading of Sub-Section (1) of Section 80HH it is apparent that the section permits a deduction @ 20% from the profits and gains derived from newly established industrial undertaking and the pre-condition is that such profits and gains are included in the gross total income of the assessee. Thus, primarily the gross total income of assessee has to include profits and gains derived from industrial undertaking; the deduction @ 20% is allowable from such profits and gains. Therefore, the assessee becomes entitled to deduction under this section provided there is an industrial undertaking from which profits and gains have been derived. In other words there has to be a situation where the assessee and the

industrial undertaking have to be separate and independent. In fact this is clear from the provision of sub-section (6) of Section 80HH of the Act. In the present case, admittedly the assessee and Panpharma division are independent units. Panpharma division is an industrial undertaking which fulfills all other conditions for claiming deduction, and the profits of Panpharma division have been included in the gross total income of the assessee. The dispute only relates to the fact as to whether the price at which the goods were transferred from Panpharma division to the main division was 'market value' of such goods, and whether it was open to the Assessing Officer to substitute such apparent consideration if he arrived at a finding that the same was not the 'market value' of the said goods. Sub-section (6) of Section 80HH of the Act envisages a situation :

- Where any goods are transferred by the eligible industrial undertaking to any other business carried on by the assessee, or where any goods are transferred from any other business carried on by the assessee to the eligible industrial undertaking; then in either case,

- Consideration, if any, for such transfer as recorded in the accounts of the eligible industrial undertaking or any other business carried on by the assessee, does not correspond to the market value of such goods on the date of the transfer;

- Then, for the purpose of deduction under Section 80HH of the Act, profits and gains of the industrial undertaking shall be computed as if the transfer in either case, had been made at the market value of such goods on the date of transfer.

- The Proviso under said sub-section (6) empowers the Assessing Officer to compute profits and gains on such reasonable basis as he may deem fit provided in his opinion the computation of profits and gains of the industrial undertaking presents exceptional difficulties. The Explanation states that for the purpose

of this sub-section, 'market value' in relation to any goods means price that such goods would ordinarily fetch on sale in the open market.

17 In the present case admittedly Panpharma division is an eligible industrial undertaking, it transferred goods to other business carried on by the assessee and recorded considertion for such transfer in the accounts of the Panpharma division. In these circumstances, the controversy has arisen as to whether the consideration recorded in the accounts corresponds to the market value of such goods on the date of transfer or not; and if the consideration for such transfer does not correspond to the market value of such goods as on the date of the transfer, then the profits and gains of the industrial undertaking are required to be computed for the purpose of deduction under Section 80HH of the Act, as if the transfer had been made at the market value of such goods. Therefore, this sub-section itself stipulates that in cases where an industrial undertaking transfers goods to any other busineess carried on by the assessee the consideration has to be at the market value, and if it is not so, the Assessing Officer can substitute the figure of consideration for transfer for the purpose of computing deduction under this section. The Explanation below sub-section (6) of Section 80HH specifically indicates that market value means the price that such goods would ordinarily fetch on sale in the open market.

18 The next question therefore that requires to be resolved is the case of a single buyer and where the seller sells 100% of the production of the seller to such single buyer what would be the price that such goods would ordinarily fetch on sale in the open market. This question cannot be answered in the abstract. Each case will turn on its own facts : as to what are the goods, what is the market for such goods, whether there are any restrictions in dealing with such goods, and various other diverse factors which cannot be enumerated. In the circumstances, each matter will have to turn on its own facts.

19 Once the provision envisages a particular situation, viz. deemed sale at market value, it is not possible to state that the Assessing Officer cannot substitute his opinion. Such an opinion has to be an objective opinion based on the facts and circumstances obtaining on the date of transfer. Hence, in a given situation, it may be open to an assessee to challenge the value adopted by the Assessing Officer, if on facts, it

could be shown that the market value was, not what assessing officer had arrived at , considering the language of the Explanation below sub-section (6) of Section 80HH of the Act, but the market value was something else. However, this would be in the realm of evidence, especially contemporaneous evidence, and in the facts of the present case, nothing has been brought on record to dislodge the findings recorded by the Tribunal to the effect that :

" xxx xxx xxx we are of the view that the profits of Pan Pharma Division have been arrived at from the books of account of the assessee by excluding certain expenses and also by reducing the sale price. In view of this, we are unable to concur with the main contention of the assessee that the books of account relating to Pan Panpharma Division reflect the true profits of the unit. xxx xxxx"

20 Therefore, it is not possible to accept the contention of the appellant that merely because the entire production of Panpharma division had been sold to the main division of the assessee, there could be no occasion for disturbing the figure of consideration. Various decisions cited on behalf of the appellant, especially those relating to apportionment of expenses, would not carry the case of the appellant any further, in as much as in none of the decisions the Court was called upon to specifically deal with the provisions of the nature of Section 80HH(6) read with Explanation thereunder.

21. Reliance on sub-section (7) of Section 80HH of the Act on behalf of the revenue, in the circumstances of the case was, to say the least, misplaced. The said sub-section comes into play only in a situation where there is a transaction between the assessee carrying on the business of industrial undertaking and some other person where in the course of the business between them it is so arranged that the business so transacted produces more than the ordinary profits in the hands of the assessee. In the present case admittedly there is no business transaction between assessee and some other person. An industrial undertaking which is a separate unit vis-a-vis the assessee cannot be treated as any other person, as the phrase any other person itself indicates that it has to be a person other than assessee. In the present case Panpharma division is not other person, and only after its profits are included in the

gross total income of the appellant assessee that the question would arise as regards computing the profits and gains derived from industrial undertaking from which deduction at stipulated percentage can be granted.

22 As the language employed by Section 80I of the Act is identical in terms, the aforesaid discussion in relation to claim u/s.80HH of the Act would also apply mutatis mutandis to the claim u/s. 80I of the Act.

23 In the result, this ground of appeal fails and there is no infirmity in the impugned order of the Tribunal which would call for interference.

IV. DEDUCTION UNDER SECTION 80HHC OF THE ACT.

24 In the computation of income deduction under Section 80HHC of the Act was claimed at Rs.1,06,33,710/duly supported by the statutory audit report in the prescribed form. The Assessing Officer noticed that deduction under section 80HHC of the Act had been claimed on income like rent, computer charges, service charges, miscellaneous income, insurance etc. As the assessing officer was of the opinion that deduction could not be granted on such items he worked out the figure at Rs.85,21,970/- and ultimately allowed deduction under Section 80HHC of the Act on the said basis. For this purpose, provisions of Section 80HHC with Explanation below the said section with special reference to clause (baa) was relied upon. The CIT (Appeals) while upholding the assessment order negatived the contention of the assessee that a liberal construction should be adopted in favour of the assessee. The assessee's appeal before the Tribunal also failed on this count.

25 As the entire controversy centres round the meaning to be assigned to the language employed in clause (baa) of the Explanation to Section 80HHC of the Act as applicable for the assessment of the year under consideration, the relevant extract is reproduced hereinbelow :

"Deduction in respect of profits retained for export business.

80HHC.(1) Where an assessee , being an Indian Company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies there shall, in

accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of the [profits] derived by the assessee from the export of such goods or merchandise."

xxx xxx xxx xxx

"Explanation. -For the purposes of this section"

xxx xxx xxx xxx xxx

"(baa) 'profits of the business' means the profits of the business as computed under the head 'Profits and gains of business or profession' as reduced by -

(1) ninety per cent of any sum referred to in clauses (iiia), (iiib) and (iiic) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India".

26 Mr.K.H.Kaji, learned Advocate appearing on behalf of the appellant submitted that while defining the profits of the business in sub-clause (1) the legislature envisaged reduction from the profits of certain items and these items have to be taken as alternative to one another, viz. anyone item could be reduced from the profits of the business. That the approach of the revenue in reducing the profits by more than one item was not warranted by the plain language employed by the legislature. It was submitted that use of the word 'or' had to be read as one understood in the common parlance. That once 90% of any sum referred to in section 28(iiia) or section 28(iiib) or section 28(iiic) of the Act was reduced from the profits computed under the head Profits and Gains of Business of Profession, the Assessing Officer cannot also reduce such profits by way of receipts like brokerage, commission, interest, rent etc. That the word 'or' cannot be substituted by the term 'and' for the purpose of applying clause (baa) of the

Explanation below Section 80HHC of the Act. That the assessing officer had read the word 'or' as 'and'. The CIT (Appeals) and the Tribunal confirmed this interpretation of the provision.

27 It is not possible to accept the contention. On a plain reading of the propvision as it stands it is apparent that what the provision stipulates is that 'profits of the business' for the purpose of section 80HHC of the Act mean the profits of the business as computed under the head Profits and Gains of Business or Profession. While computing such profits under the head Profits and Gains of Business of Profession if any sum referred to in clauses (iiia), (iiib) or (iiic) of Section 28 of the Act has been included in such profits the same has to be reduced by 90% from the profits computed as aforesaid. Similarly if any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature is included in such profits i.e. profits of the business, such profits have to be reduced by the said figure i.e. by 90% while computing (profits of the business) for the purpose of Section 80HHC of the Act. Therefore, once the sums or the receipts of the nature specified in sub-clause (1) of clause (baa) of the Explanation are included while computing profits and gains of business then such sums or receipts are to be reduced to the extent of 90% from the profits of the business. Once the language employed by the provision is clear it is not necessary for the Court to read anything into the said language nor go behind the language employed by the legislature so as to ascertain the intention of the legislature. This would become necessary only when the language employed by the statute is ambiguous in any manner. In the present case that cannot be termed to be the situation. Therefore, the ground raised on behalf of the appellant as regards the interpretation to be placed on clause (baa) of the Explanation to Section 80HHC of the Act does not merit acceptance and fails.

27 In the result, the entire appeal on all the grounds fails and is dismissed. There shall be no order as to costs.

(D.H.Waghela, J) (D.A.Mehta,J)

m.m.bhatt